IMPACT
COMMUNITY CAPITAL LLC

June 29, 2001

Jeffrey C. Berg
Acting Director
Community Development Financial Institutions Fund
U.S. Department of the Treasury
601 13th Street, NW
Suite 200 South,
Washington, DC 20005

Dear Mr. Berg:

IMPACT Community Capital LLC (IMPACT) is pleased to have this opportunity to comment on the CDFI Fund's Guidance on the New Markets Tax Credit (NMTC) program.

IMPACT is a unique investment organization that is rooted in the insurance industry and committed to channeling resources into California's under-served communities. Through its investments, IMPACT finances projects that generate jobs and housing, create small business growth opportunities and provide other economic and community development benefits. To date, IMPACT has purchased community development loans totaling approximately $40 million and has committed to purchase an additional $300 million in such loans. IMPACT funds its loan purchases through securitization structures.

IMPACT's owners include Allstate Insurance Company, Conseco, Farmers Insurance Companies, Nationwide Mutual Insurance Company, Pacific Life Insurance Company, PMI Mortgage Insurance Co., SAFECO Insurance, State Farm Insurance Companies, Teachers Insurance and Annuity Association, 21st Century Insurance Company, and Zenith Insurance Company.

We are excited about the opportunities presented by the NMTC, both as a potential investor and as a potential Community Development Entity (CDE).

<u>CDFI Question 2</u>. *Should there be limits as to the amount of a NMTC allocation that may be awarded to an applicant in a calendar year?*

Tax credit programs are relatively complex and lend themselves to economies of scale. As is the case with the low-income housing tax credit, most institutional investors

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will want to deal with CDEs that are experienced in community development investments and tax credit management. Therefore, there should be no limit during at least the first year or two of the program, until the CDFI Fund has some sense of the quantity and quality of applications as well as their geographic dispersion.

Other Issues: The Allocation Agreement

As noted in our comments to the IRS, recapture risk is the single most important issue for investors. The circumstances under which recapture will occur should be uniform for all CDEs and defined in the statute and related regulations. We believe that a violation by a CDE of its Allocation Agreement, unless due to bad faith on the part of the CDE, should not trigger recapture of the NMTC. In particular, the CDE should not be subject to recapture if it is not able to generate intended social impacts, e.g., jobs generated are less than projected. Otherwise, different CDEs will be subject to different recapture events, depending in part on their skills in negotiating the Allocation Agreement. In general, we believe that the Allocation Agreement should be a "boilerplate", relatively uniform document that focuses on the mechanics of the allocation (e.g., reporting) and not be a subjective vehicle for establishing program or financial targets or benchmarks for the CDE.

We also believe that the Allocation Agreement should not prevent a CDE from changing its business plan or geographic focus in order to be successful, particularly after the first year or two following allocation. CDEs will constantly need to change their products, strategies and market focus to take advantage of new opportunities. A struggling CDE should not be restricted to a failed strategy or market. To the extent CDEs follow the same pattern as CDFIs, most will be rooted to a specific area, and it is highly unlikely they will change geographic focus unless it is a logical expansion of their existing market.

Other Issues: Business Trusts

We also ask for clarification that, in addition to LLCs, business trusts can be used as a CDE vehicle, so long as they are taxable as a partnership. Business trusts are commonly used in securitization programs, and thus may be an important vehicle for attracting new mainstream investors to low-income communities.

Other Issues: Securitization

Use of Non-CDE Depositor in Securitizations. Prevailing securitization practice typically contemplates the sale of financial assets from the originator to a special purpose entity, called a depositor, and the contribution by the depositor of the financial assets into the securitization vehicle, which in turn issues the securities representing interests therein. If both the originator of the financial assets and the securitization vehicle were CDEs, but the depositor were not, there would be a question whether investment by the securitization vehicle would be a qualified low income community investment, since the financial assets were purchased from the depositor. Typically the depositor is a passive, single purpose vehicle whose only purpose is to insulate the securitization vehicle from the potential bankruptcy of the originator, and whose organizational purpose is limited in its constituent documents. Accordingly, we believe there is no policy reason why the depositor should be required to be certified as a CDE, and requiring such certification would increase the cost of securitizations. In order to facilitate use of NMTCs in a securitization context, we request clarification that the presence of a non CDE depositor as an intermediate party between the originator and the securitization vehicle does not deprive the financial assets sold of their status as having been purchased from a CDE originator.

Transfer of Allocation to Securitization Vehicle. We also ask for clarification as to whether a parent CDE can transfer all or part of its allocation of NMTCs to a securitization vehicle that it establishes (assuming that securitization vehicle also qualifies as a CDE). For example, a CDE may establish a securitization vehicle to hold a specific series of qualifying loans the CDE originates or purchases, with that securitization vehicle issuing securities to fund those loans. In such a case, the CDE will have received an allocation of NMTCs and will want to be able to allocate NMTCs to investors in the securitization vehicle or vehicles that it has established. Otherwise, it will be difficult for CDEs to effectively conform to existing securitization practices, again precluding the use by CDEs of an important tool for raising capital from mainstream investors.

Other Issues: Allocation of NMTCs to Investors

We also ask for clarification of whether a CDE can elect to allocate tax credits to some but not all of its investors. For example, foundations, universities and pension funds may choose to invest in a CDE. As tax exempt entities, they do not benefit from the tax credit. If a CDE is required to allocate a tax credit to those tax-exempt investors, it will provide an incentive for many CDEs to apply for more tax credits than they can effectively allocate, and some portion of their allocation will go unused.

Please contact me if you have any questions on these comments.

Sincerely,

/s/ Daniel F. Sheehy

DJM

Daniel F. Sheehy
President and CEO

cc: IRS